

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA**

Abingdon Division

CLERKS OFFICE U.S. DIST. COURT
AT ABINGDON, VA
FILED
1/7/2021
JULIA C. DUDLEY, CLERK
BY: LOTTIE LUNSFORD
DEPUTY CLERK

**CERTAIN UNDERWRITERS AT LLOYD’S)
SUBSCRIBING TO POLICY NO.)
B0180PC1500210)
a/s/o FLEET CAR LEASE, INC.)**

Plaintiff,

v.

Case No. 1:21CV00003

**PERFORMANCE PETERBILT)
OF BRISTOL, LLC)**

Serve:

**Nathan Ried, Registered Agent)
33392 Lee Highway)
Glade Spring, VA 24340)**

Defendant.

COMPLAINT

Plaintiff Certain Underwriters at Lloyd’s Subscribing to Policy No. B0180PC1500210 a/s/o Fleet Car Lease, Inc. by counsel, states the following as its Complaint against Defendant, Performance Peterbilt of Bristol, LLC (“Peterbilt”):

I. Parties, Jurisdiction and Venue

1. The Plaintiff, Certain Underwriters at Lloyd’s Subscribing to Policy No. B0180PC1500210 (“Certain Underwriters”), is a European insurance company with its principal place of business in Europe and which provides, among other things, coverage to companies hauling cargo in the United States

2. Certain Underwriters' insured, Fleet Car Lease, Inc. ("Fleet") had at all relevant times a policy of insurance covering certain automobiles being hauled by Fleet, that policy being issued by Certain Underwriters and in full force and effect at the time of the accident made the basis of this lawsuit. Specifically, this policy was in force and effect and covering the cargo being hauled by Ellis Esterline on his 2015 388 Peterbilt truck ("the Truck").

3. The Defendant, Peterbilt, is a limited liability company in the Commonwealth of Virginia with a registered agent located at 33392 Lee Highway, Glade Spring, VA 24340 in Washington County. Upon information and belief, the members of Peterbilt are citizens of the states of Florida and Tennessee.

4. This matter arises out of a vehicle fire and loss of the cargo on the Truck that occurred near the 98 mile marker northbound on Interstate 81 in Newbern, Virginia, in Pulaski County, on January 7, 2016.

5. Pursuant to 28 U.S.C. §1332, this Court has jurisdiction over this case because it is a lawsuit between parties of diverse citizenship and the amount in controversy exceeds \$75,000. Venue in this action is proper in this District Court pursuant to 28 U.S.C § 1391(b)(2) as a substantial part of the events or omissions giving rise to the claims herein occurred in this district.

II. Facts

6. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 5 of its Complaint.

7. On January 7, 2016, Mr. Esterline had warranty work completed to the front drive axle of the Truck at Peterbilt.

8. Peterbilt failed to perform this service in a workmanlike manner and failed to use ordinary care when performing the service.

9. Directly after Peterbilt completed the service to the Truck, Mr. Esterline lawfully operated the Truck on Interstate 81 northbound.

10. Near mile marker 98 on Interstate 81, suddenly and without warning, the Truck caught on fire on the front drive axle that Peterbilt had serviced. Mr. Esterline was forced to discontinue operation of the Truck as the fire engulfed it and its cargo in flames.

III. Negligence

11. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 10 of its Complaint.

12. Peterbilt had a duty to exercise ordinary care in the performance of maintenance requested by Mr. Esterline, and to perform this maintenance in a workmanlike manner.

13. Peterbilt breached this duty by performing repairs and/or service to the Truck a negligent manner.

14. Peterbilt's negligence caused the Truck to catch fire while Mr. Esterline was operating it. As a result of Defendant's negligence, the Nissan cars being hauled on the truck were damaged and destroyed. The Nissans were insured by Certain Underwriters, which paid for the damage to the Nissan vehicles pursuant to the terms of its policy and is subrogated to the damages sustained by its insured to the extent of the payment it made. Certain Underwriters's damages exceed \$100,000.

WHEREFORE, for the foregoing reasons, the Plaintiff prays for judgment against the Defendant in the amount of \$350,000, plus interest at judgment rate, plus the Plaintiff's costs incurred herein, and for any other such relief that the Court deems appropriate.

TRIAL BY JURY IS DEMANDED

Dated: January 7, 2021.

Respectfully submitted,

CERTAIN UNDERWRITERS AT LLOYD'S SUBSCRIBING TO POLICY
NO. B0180PC1500210

/s/ Martin A. Conn
By Counsel

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